IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.829 OF 2005

Nagarik Sahayya Kendra & anr. ..Petitioners.

Vs.

Sanjay B. Barge ..Respondents.

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Ms.Anupama Shah for the Petitioners.

Ms.Ranjana Todankar for Respondent No.1.

Ms.Sindhu Sridharan for Respondent Nos.2 and 3.

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CORAM : DR.D.Y.CHANDRACHUD, J.

4th April, 2005.

P.C. :

An order passed by the School Tribunal on 24th January, 2005 setting aside an order of oral termination dated 25th January, 2002 and granting reinstatement to the First Respondent with backwages is impugned in these proceedings by the management.

The First Respondent was initially appointed in a leave vacancy between 26th July,

1995 and 26th August, 1995; 28th August, 1995 and 28th February, 1996 and from 13th June, 1996 till 2nd November, 1996. There is no dispute about the factual position that the First Respondent is duly qualified to hold the post of Assistant Teacher. A permanent teacher belonging to the open category by the name of Mrs.Samant expired on 27th November, 1996 and as against the vacancy which was created, the First Respondent was appointed for the period between 27th November, 1996 and 30th April, 1997. The First Respondent was thereafter again appointed on 13th June, 1997 till 30th April, 1998. The appointment of the First Respondent was approved by the Education Department on probation by a communication dated 20th September, 1998. This is an admitted position and the communication of the Education Department is annexed to the compilation which is placed on record by the management at the hearing of this Petition. The appointment of the First Respondent was thus approved, as against a permanent post belonging to the open category on probation. Upon the expiry of the period of probation the consequences of a deemed confirmation under Section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation

Act, 1977 must follow. In the seniority list that was displayed by the management in 1997, the First Respondent was shown at Sr. No.24 against an open post. The roster which was produced by the management before the School Tribunal, a copy of which is annexed to the affidavit in reply of the First Respondent, shows that for 1996-97 as well as 1999-00 the post which was held by the First Respondent is shown as an open post.

The Deputy Education Inspector had also filed an affidavit before the School Tribunal (Exh.2-i to these proceedings) and in the affidavit it has been clarified that in accordance with the roster, the appointment of the First Respondent was against a post in the open category and since the First Respondent was in service since 1996-97 the Education Department approved his appointment on probation with effect from 13th June, 1998. Despite this the services of the First Respondent were unlawfully terminated by the management on 30th March, 1999 and an order of appointment was purported to have been issued to him on 1st July, 1999 against a reserved post. Subsequently, the First Respondent was appointed under the Shikshan

Sevak Scheme in pursuance of the Government Resolution dated 13th October, 2000. The entire conduct of the management is patently unlawful. The School Tribunal is justified in taking the view that the termination was invalid since the facts which have come on the record clearly show that the appointment in the present case was against a clear and permanent vacancy belonging to the open category. This was much prior to the enforcement of the Shikshan Sevak Scheme and the status of permanence which the First Respondent acquired on the expiry of his period of probation cannot be obviated by the management by a subsequent unlawful conduct in terminating the services of the First Respondent, initially appointing him against a reserved post and thereafter against the Shikshan Sevak Scheme. The order passed by the School Tribunal does not require interference. The Petition is accordingly rejected.